APPEAL NO. 033023
FILED DECEMBER 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on October 13, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter, July 12 through October 10, 2003. The claimant appeals, asserting that the narrative from her treating doctor, Dr. M, and the records of her psychologist, Dr. R, establish that she has no ability to work, that the report of the required medical examination (RME) doctor, Dr. B, does not assess the full extent of the claimant's compensable injury, and that portions of the videotapes from surveillance of the claimant are from too far outside the qualifying period to be relevant to the dispute. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The claimant contended that she had no ability to work during the qualifying period for the fifth quarter. Even though the hearing officer found that the evidence submitted by the claimant was sufficient to show that the claimant was unable to perform any type of work in any capacity, and that Dr. M provided the requisite narrative, the hearing officer went on to find that the medical report from the RME doctor and the surveillance video reports show that the claimant is able to return to work. As to the claimant's complaints about the relevance of portions of the surveillance videotapes, we have previously recognized that evidence from outside of the qualifying period is admissible and can be considered by the hearing officer. If anything, the fact that the evidence is remote in time from the qualifying period affects the weight and not the admissibility of the evidence. We perceive no error.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We are satisfied that the challenged SIBs determination of the hearing officer is not so against the great weight and

preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. JIM MALLOY
AMERICAN INTERNATIONAL GROUP
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.

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Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

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Edward Vilano
Appeals Judge

CONCURRING OPINION:

While I do not understand Finding of Fact No. 3, wherein the hearing officer finds that the claimant has been unable to perform any type of work in any capacity, but also finds that the claimant is able to return to work, I can concur in the affirmance based on the hearing officer's Finding of Fact No. 2.c., that during the qualifying period for the fifth quarter, the claimant did not make a good faith effort to obtain employment commensurate with her ability to work, which indicates that the hearing officer ultimately determined that the claimant was able to work during the relevant qualifying period. Because the hearing officer found that other records show that the claimant is able to return to work, and that finding is supported by sufficient evidence, the finding that the claimant has been unable to perform any type of work in any capacity is untenable and should not have been made.

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Robert W. Potts
Appeals Judge